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No. 2543

United States
Circuit Court of Appeals

For the Ninth Circuit.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO,
a Municipal Corporation, and TAX COLLECTOR of Said City and County,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the
Northern District of California, Second Division.

Filed

JAN 28 1915

F. D. Monckton,
Clerk.

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Circuit Court of Appeals
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, Northern
District of California, Second Division.*

. Nos. 14,735—14,892—15,131—15,569—15,344—26.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Cor-
poration,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO, et al.,
Defendants.

**Notice of Motion [for Order Directing Payment of
Taxes, etc.].**

To SPRING VALLEY WATER COMPANY a
Corporation, and McCUTCHEON, OLNEY and
WILLARD, its Attorneys:

To the Crocker National Bank of San Francisco;
to the First National Bank of San Francisco; to the
Anglo & London Paris Bank of San Francisco; to the
Union Trust Company of San Francisco; to the Mer-
cantile National Bank of San Francisco; to the Bank
of California National Association of San Francisco;
to the Wells Fargo Nevada Bank of San Francisco;

You, and each of you will please take notice that
on Monday the 30th day of November, 1914, in the
above-entitled Court and division, before the Hon.
WILLIAM C. VAN FLEET, Judge presiding
therein, at the hour of 10 o'clock A. M. or as soon
thereafter as counsel can be heard, the undersigned
will apply for an order in the above-entitled court
directing the [1*] payment of the taxes levied and

*Page-number appearing at foot of page of original certified Record.

assessed against the above-named banks as receivers and depositories of moneys in litigation in the above-entitled actions.

Said motion will be based upon this notice, upon the tax bills heretofore rendered, and upon the grounds that said taxes are due, have not been paid and that Monday the 30th day of November is the last day permitted by law for the payment of said taxes with the addition of penalties.

PERCY V. LONG,

City Attorney,

Attorney for Tax Collector.

[Endorsed]: Filed November 30, 1914, Walter B. Maling, Clerk. [2]

*In the District Court of the United States, Northern
District of California, Second Division.*

Nos. 14,275 — 14,735, — 14,892 — 15,131 — 15,569
—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,
Defendants.

Stipulation as to Facts.

For the purposes of the determination of the application of the city attorney of the city and county of San Francisco, State of California, as attorney for the tax collector of said city and county, notice of

which was given on or about the 28th day of November, 1914, for an order of the above-entitled court directing the payment of the taxes levied and assessed against certain named banks as receivers and depositories of moneys in litigation in the above-entitled actions, complainant and defendants in the above-entitled actions, and the said city attorney as attorney for the said tax collector, hereby stipulate and agree that the following are the material facts in the determination of said application [3] and that said application may be heard and determined thereon:

On June 22, 1908, Spring Valley Water Company, a corporation, filed a bill of complaint in equity, No. 14,735, in what was then the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California, against the City and County of San Francisco, a municipal corporation, and the board of supervisors of said city and county.

The bill alleged that the complainant was engaged in the business of supplying the city and county of San Francisco and its inhabitants with water; that on June 15, 1908, the said board of supervisors passed a certain bill or ordinance, fixing the maximum rates to be charged for furnishing water to the city and county of San Francisco and its inhabitants for the fiscal year commencing July 1, 1908, and threatened to enforce the same against the complainant. The complainant further alleged that said bill or ordinance, and the rates fixed thereby, were wholly void, null, grossly unjust, unreasonable, fraudulent and unconstitutional under the provisions of the Con-

stitution of the United States, and were oppressive and confiscatory, and did not permit of or provide for a just or reasonable or fair compensation for the water to be supplied during the said year by complainant to the said city and county and its inhabitants. The Court was asked to enjoin the defendants and all consumers of water in said city and county, both pending the litigation and perpetually at its conclusion, from enforcing against the complainant the said bill or ordinance or the rates fixed therein.

On October 7, 1908, the circuit court directed that the preliminary injunction issue and, as certain of the conditions thereof, provided as follows: [4]

“2. All compensation collected while said injunction remains in force in excess of the rates specified in said ordinance, that is, the difference between the charge so collected and the amount which would have been collected from its customers, provided bills had been rendered therefor at the rates fixed by said ordinance, shall be paid by complainant into such bank or banks and on such terms as to interest and security as may be arranged and agreed upon by counsel with the approval of any federal judge sitting in this court. If counsel fail to agree, a depository will be named and the terms of deposit fixed by such a judge. All of the excess so collected shall be paid into such bank each month during the time this injunction remains in force and immediately after the same is collected. All moneys so collected shall be received by said bank or banks, or other selected depository, and held as a special deposit, appropriately entitled, upon which interest at a rate to be

agreed upon as hereinbefore provided shall be paid.

3. Such deposits shall be held subject to the order of this court, and shall only be paid out on checks to be drawn by a special master pursuant to such order, and countersigned by a federal judge sitting in this court.

4. As soon as possible after each such monthly deposit, said complainant shall file in this court an affidavit showing in detail the name and address of each customer, or such facts as may be sufficient to identify such customer, to whom water has been furnished, and the amount collected during such calendar month from each said customer for such water in excess of the amount which he would have paid under the rates specified in said ordinance, and the total amount deposited in such bank or banks during said month. [5]

5. In order to facilitate the return of moneys so deposited, in the event of a decision or order of this court directing such return, Southard Hoffman, clerk of this court, is hereby appointed a special master to ascertain and report as to the amounts to be paid to each individual claimant, and as to the identity of such claimant. He is thus selected as special master for the reason that the claimants of the fund will be extremely numerous, and their identity and the amount of their claims will have to be established by incessant reference to the sworn statements of complainant, which will be filed in this court, and be kept in the clerk's custody, and such reports can be most expeditiously and economically

consulted by a special master who is an officer of this court.

6. In the event complainant fails in this suit all charges so collected for water in excess of the rates specified in said ordinance shall be refunded to the person or persons from whom they were collected.

7. In the event this court shall adjudge any charge or charges for water made by complainant excessive, whether said ordinance be valid or invalid, such excess of charge, provided the same shall also be in excess of the rates fixed by said ordinance shall be returned to the person or persons from whom it was collected.”

Thereafter, on October 24, 1908, said injunction was issued and has to the present time continued in force.

On December 14, 1908, pursuant to stipulation by the parties, the circuit court made the following order designating Mercantile Trust Company of San Francisco as the depository for the impounded moneys: [6]

“On stipulation of counsel for the respective parties, it is hereby ordered that, while and so long as the interlocutory injunction issued under the order made in the above-entitled cause on the 7th day of October, 1908, shall be in force, all compensation collected by complainant for water supplied to the city and county of San Francisco, or the inhabitants thereof, up to and including June 30, 1909, in excess of the rates specified in the ordinance referred to in the bill of complaint in this action shall be deposited by complainant with Mercantile Trust Company of

San Francisco in the city and county of San Francisco; and that all such moneys shall bear interest at the rate of two per cent per annum from the date of each deposit, and that the account representing such deposit shall be entitled 'Spring Valley Water Company—Special Account.' All such deposits shall be held subject to the order of the above-entitled court, and shall only be paid out on checks to be drawn by Southard Hoffman, clerk of the above-entitled court (who was by said order of October 7, 1908, appointed special master) and countersigned by a federal judge sitting in the above-entitled court."

Thereafter, similar complaints to enjoin the enforcement of the water rates for the fiscal years subsequently ensuing were filed by the Spring Valley Water Company against the city and county of San Francisco and the board of supervisors of said city and county, as follows:

No. 14,892, covering the rates for the fiscal year commencing July 1, 1909, filed June 15, 1909, in what was then the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

No. 15,131, covering the rates for the fiscal year [7] commencing July 1, 1910, filed June 27, 1910, in what was then the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

No. 15,344, covering the rates for the fiscal year commencing July 1, 1911, filed June 26, 1911, in what was then the Circuit Court of the United States,

Ninth Judicial Circuit, Northern District of California.

No. 15,569, covering the rates for the fiscal year commencing July 1, 1912, filed June 26, 1912, in the District Court of the United States, Northern District of California, Second Division.

No. 26, covering the rates for the fiscal year commencing July 1, 1913, filed June 27, 1913, in the District Court of the United States, Northern District of California, Second Division.

In case No. 14,892, a temporary restraining order was issued by the circuit court on June 15, 1909, which temporary restraining order has, to the present time, continued in force. With the exception that no special master was therein appointed, this order made the same provisions for the impounding of the moneys as did the order for the preliminary injunction in case No. 14,735, as hereinbefore set forth. No stipulation or order designating the depository for the excess moneys, as in case No. 14,735, was subsequently made, but complainant deposited said moneys from time to time with Mercantile Trust Company of San Francisco, as in case No. 14,735.

In case No. 15,131, a temporary restraining order was issued by the circuit court on June 30, 1910, which temporary restraining order has, to the present time, continued in force. With the exception that no special master was therein appointed, this order made the same provisions for the impounding of the [8] moneys as did the order for the preliminary injunction in case No. 14,735, as hereinbefore set forth. No stipulation or order designating

the depository for the excess moneys, as in case No. 14,735, was subsequently made, but complainant deposited said moneys from time to time with Mercantile Trust Company of San Francisco, as in case No. 14,735.

In case No. 15,344, a temporary restraining order was issued by the circuit court on June 29, 1911, which temporary restraining order has, to the present time, continued in force. The restraining order made no provision for the impounding of the moneys, but, on August 5, 1911, it was stipulated by the parties that the excess moneys be impounded in Mercantile Trust Company of San Francisco. Said stipulation provided as follows:

“IT IS FURTHER STIPULATED that while and so long as the restraining order issued under the order made in the above-entitled cause on the 29th day of June, 1911, shall be in force, all compensation collected by complainant for water supplied to the City and County of San Francisco, or the inhabitants thereof, up to and including June 30, 1912, in excess of the rates specified in the ordinance referred to in the bill of complaint in this action, shall be deposited by complainant with Mercantile Trust Company of San Francisco, with the understanding, and subject to the condition, that any amounts so deposited shall be repaid to complainant in case it is successful in this action. In case complainant is not successful, and the rates fixed by ordinance and set forth in the complaint herein are held to be valid, then said amounts so collected shall be returned to the person or persons entitled thereto.” [9]

On July 29, 1912, by orders of the District Court of the United States, Northern District of California, Second Division, in cases No. 14,892, 15,131 and 15,344, J. A. Schaertzer was appointed special master. Said orders were worded as follows:

“Whereas, it appears to the court that, in the above-entitled action, a certain amount of money has been deposited by complainant with Mercantile Trust Company of San Francisco, pending a determination of the questions involved in this action; and,

Whereas, said amount so deposited is to be withdrawn only on a check, or checks, drawn by a special master and signed by a special judge sitting in this court:

Now, therefore, it is hereby ordered that, in order to facilitate the return of moneys so deposited, in the event of a decision or order of this court directing such return, J. A. Schaertzer, deputy clerk of this court, is hereby appointed special master to ascertain and report as to the amounts to be paid to each individual claimant and as to the identity of such claimant. He is thus selected and appointed a special master for the reason that the claimants of the fund will be extremely numerous, and their identity and the amount of their claims will have to be established by incessant reference to the sworn statements of complainant which will be filed in this court and kept in the clerk's custody, and such reports can be most expeditiously and economically consulted by a special master who is an officer of this court.”

On the same day, by a similar order made by the same court in case No. 14,735, the said J. A. Schaertzer was appointed special master as successor to Southard Hoffman, deceased. [10]

In case No. 15,569, the district court, on July 20, 1912, ordered that a preliminary injunction issue. Said order provided as follows:

“IT IS FURTHER ORDERED, pursuant to stipulation of the parties hereto, on file herein, that all amounts collected by complainant, in the above-entitled action, in excess of the rates fixed by ordinance for the fiscal year beginning July 1, 1912, be deposited and impounded each month with Mercantile Trust Company of San Francisco, pending a determination of the questions involved in said action, and that within fifteen (15) days after each monthly deposit complainant file in this court an affidavit showing in detail the name and address of each customer, or such facts as may be sufficient to identify such customer, to whom water has been furnished, and the amount collected during said calendar month from each said customer for such water in excess of the amount which he would have paid under the rates specified in said ordinance, and the total amount deposited in said bank during said month. The amounts so deposited shall be withdrawn only on checks drawn by a special master and countersigned by a federal judge, sitting in this court.

In order to facilitate the return of moneys so deposited, in the event of a decision or order of this court directing such return, J. A. Schaertzer, deputy clerk of this court, is hereby appointed a special mas-

ter to ascertain and report as to the amounts to be paid to each individual claimant and as to the identity of such claimant. He is thus selected as special master for the reason that the claimants of the fund will be extremely numerous and their identity and the amount of their claims will have to be established by incessant reference to [11] the sworn statements of complainant which will be filed in this court and kept in the clerk's custody, and such reports can be most expeditiously and economically consulted by a special master who is an officer of this court.

Thereafter, on July 24, 1912, said injunction was issued, which injunction has, up to the present time, continued in force.

In case No. 26, a temporary restraining order was made by the district court on June 30, 1913, which temporary restraining order has, up to the present time, continued in force. Thereafter, on July 15, 1913, the district court, by an order making the same provisions in this regard as did the order for the preliminary injunction in case No. 15,569, as hereinbefore set forth, directed the money to be impounded in Mercantile Trust Company of San Francisco, and appointed J. A. Schaertzer special master.

In accordance with the stipulations and orders of court in suits No. 14,735, 14,892, 15,131, 15,344, 15,569 and 26, hereinbefore referred to, complainant, from time to time, deposited with Mercantile Trust Company of San Francisco the moneys collected by it in excess of the rates fixed by the various ordinances. Subsequently to the depositing of the moneys with Mercantile Trust Company of San Francisco in each

of the above-numbered suits, the district court, from time to time, ordered a portion of the moneys so deposited in each of said suits to be transferred to certain of the following named institutions, to wit: Wells Fargo Nevada National Bank of San Francisco, The Crocker National Bank of San Francisco, The Bank of California National Association, Union Trust Company of San Francisco, The First National Bank of San Francisco, and The Anglo and London Paris National Bank. Said orders were worded as follows: [12]

“Whereas, the amount of money deposited with the Mercantile Trust Company of San Francisco, in this cause and others between the same parties, is greater than, in the opinion of the court, should be deposited with a single depository:

Now, in consideration of the premises, it is ordered that, of the moneys so deposited with said Mercantile Trust Company of San Francisco in the above-entitled cause (amounting in the aggregate to the sum of ———— dollars, besides interest), there shall be deposited the sum of ———— dollars, with each of the following named institutions, to wit, ————, each of which has heretofore been designated by this court as a depository in bankruptcy proceedings, and each of which is hereby appointed a depository for the purposes of this order.

In order that said Mercantile Trust Company of San Francisco shall not be inconvenienced by having all said moneys withdrawn at one time, it is hereby ordered that ———— dollars of said sum shall be deposited with each of said depositories, herein

named, on the —— day of ——, and that —— dollars shall be deposited with each of said depositaries on the —— day of ——, and J. A. Schaertzer, heretofore appointed special master in this cause, is directed to draw checks upon and against said Mercantile Trust Company of San Francisco and in favor of the depositaries herein named, for the amounts so directed to be deposited, and to present said checks to a federal judge, sitting in this court, for countersignature.

And it is further ordered that the said moneys, so to be deposited, shall be taken and accepted as a special deposit by each of said depositaries, herein named, and shall, with interest [13] at two (2) per cent. per annum, compounded monthly (which is the rate of interest now paid by said Mercantile Trust Company of San Francisco on the moneys so deposited with it), from the date of receipt by the depositary of each installment to the date of payment, be credited to the Spring Valley Water Company, but shall be held subject to the order of this court in this cause, and shall only be paid out on checks to be drawn by J. A. Schaertzer, heretofore appointed special master in this cause, and countersigned by a federal judge, sitting in this court."

On the first Monday in March, 1913, the amounts of moneys on deposit with the various banks in suits No. 14,735, 14,892, 15,131, 15,344 and 15,569, pursuant to the stipulations and orders hereinbefore set forth, were as follows:

WELLS FARGO NEVADA NATIONAL BANK
OF SAN FRANCISCO:

Suit No. 14,735	\$20,080.08	
Suit No. 14,892	20,080.08	
Suit No. 15,131	20,080.08	
Suit No. 15,344	20,080.08	
Suit No. 15,569	20,080.08	\$100,400.00

THE CROCKER NATIONAL BANK OF SAN
FRANCISCO:

Suit No. 14,735	\$20,081.20	
Suit No. 14,892	20,081.20	
Suit No. 15,131	20,081.20	
Suit No. 15,344	20,081.20	
Suit No. 15,569	20,081.20	\$100,406.00

[14]

THE BANK OF CALIFORNIA NATIONAL
ASSOCIATION:

Suit No. 14,735	\$25,249.67	
Suit No. 14,892	50,499.31	
Suit No. 15,131	63,124.15	
Suit No. 15,344	63,124.15	\$201,997.28

UNION TRUST COMPANY OF SAN FRAN-
CISCO:

Suit No. 14,735	\$25,250.97	
Suit No. 14,892	50,501.98	
Suit No. 15,131	63,127.50	
Suit No. 15,344	63,127.50	\$202,007.95

THE FIRST NATIONAL BANK OF SAN FRANCISCO:

Suit No. 14,735	\$25,251.04	
Suit No. 14,892	50,502.10	
Suit No. 15,131	63,127.66	
Suit No. 15,344	63,127.66	\$202,008.46

THE ANGLO AND LONDON PARIS NATIONAL BANK:

Suit No. 14,735	\$25,253.84	
Suit No. 14,892	50,507.70	
Suit No. 15,131	63,134.63	
Suit No. 15,344	63,134.63	\$202,030.80

MERCANTILE TRUST COMPANY OF SAN FRANCISCO:

Suit No. 14,735	\$45,885.29	
Suit No. 14,892	75,525.07	
Suit No. 15,131	36,178.59	
Suit No. 15,344	48,966.30	
Suit No. 15,569	163,907.96	\$370,463.21

[15]

On the first Monday in March, 1914, the amounts of moneys on deposit with the various banks in suits No. 14,735, 14,892, 15,131, 15,344, 15,569 and 26, pursuant to the stipulations and orders hereinbefore set forth, were as follows:

WELLS FARGO NEVADA NATIONAL BANK
OF SAN FRANCISCO:

Suit No. 14,735	\$20,490.92	
Suit No. 14,892	40,579.93	
Suit No. 15,131	20,490.92	
Suit No. 15,344	20,490.92	
Suit No. 15,569	65,691.18	
Suit No. 26	25,111.25	\$192,855.12

THE CROCKER NATIONAL BANK OF SAN
FRANCISCO:

Suit No. 14,735	\$20,492.19	
Suit No. 14,892	40,582.43	
Suit No. 15,131	20,492.19	
Suit No. 15,344	20,492.19	
Suit No. 15,569	65,694.97	
Suit No. 26	25,112.66	\$192,866.63

THE BANK OF CALIFORNIA NATIONAL
ASSOCIATION:

Suit No. 14,735	\$40,832.35	
Suit No. 14,892	51,532.85	
Suit No. 15,131	64,416.09	
Suit No. 15,344	64,416.09	
Suit No. 15,569	45,197.76	
Suit No. 26	25,109.89	\$291,505.03

UNION TRUST COMPANY OF SAN FRANCISCO:

Suit No. 14,735	\$25,767.65	
Suit No. 14,892	51,535.45	
Suit No. 15,131	64,419.33	
Suit No. 15,344	79,537.48	
Suit No. 15,569	45,153.89	\$266,413.80

THE FIRST NATIONAL BANK OF SAN FRANCISCO:

Suit No. 14,735	\$40,834.55	
Suit No. 14,892	51,535.64	
Suit No. 15,131	64,419.59	
Suit No. 15,344	64,419.59	
Suit No. 15,569	45,200.27	\$266,409.64

THE ANGLO AND LONDON PARIS NATIONAL BANK:

Suit No. 14,735	\$25,770.68	
Suit No. 14,892	51,541.44	
Suit No. 15,131	64,426.78	
Suit No. 15,344	79,495.22	
Suit No. 15,569	45,207.81	\$266,441.93

MERCANTILE TRUST COMPANY OF SAN FRANCISCO:

Suit No. 14,735	\$16,695.64	
Suit No. 14,892	36,899.07	
Suit No. 15,131	36,918.82	
Suit No. 15,344	19,839.71	
Suit No. 15,569	44,073.35	
Suit No. 26	140,900.53	\$295,327.12

There has been assessed to the Wells Fargo Nevada National Bank of San Francisco on the assessment-roll of the city and county of San Francisco, State of California, for the fiscal year 1914-1915, in volume entitled "Vol. 16 W. X. Y. Z. Unsecured Personal Property 1914" at page 42 of said volume, in the manner hereinafter set forth the sum of \$100,400.00. In the said assessment the Wells Fargo Nevada National Bank of San Francisco is described as "Receiver of Impounded Moneys," and is further described as "Receiver or depository under order of court of the impounded moneys in Equity Suits Numbered 14,275-14,735-14,892-15,131-15,569-15,344-26, District Court of the United States wherein the Spring Valley Water Company is plaintiff and city and county of San Francisco et al., defendants." There is added to the last mentioned designation the words "(Assessment for the year 1913)." On the said assessment there are the further words, "Escaped assessment for the year 1913."

The said property has been assessed on the said assessment-roll on the said valuation above mentioned, and taxes have been levied thereon for said fiscal year at the rate of \$2,289 on each \$100 of said valuation, the said taxes computed at the said rate amounting to the sum of \$2,298.16.

There has been further assessed to the Wells Fargo Nevada National Bank of San Francisco on the said assessment-roll, in the manner hereinafter set forth, the sum of \$192,855.00. In the said assessment the Wells Fargo Nevada National Bank of San Francisco is described as "Receiver of Impounded

Moneys," and is further described as "Receiver or depository under order of Court of the impounded moneys in Equity Suits Numbered 14,275—14,735—14,892—15,131—15,569—15,344—26, District Court of the United States, wherein the Spring Valley Water Company is plaintiff and [18] City and County of San Francisco et al., defendants. The said property has been assessed on the said assessment-roll on the said valuation above mentioned, and taxes have been levied thereon for said fiscal year at the rate of \$2,289 on each \$100 of said valuation, the said taxes computed at the said rate amounting to the sum of \$4,414.45.

There has been assessed to The Crocker National Bank of San Francisco on the assessment-roll of the City and County of San Francisco, State of California, for the fiscal year 1914—1915, in volume entitled "Vol. 3C Unsecured Personal Property 1914" at page 96 of said volume, in the manner hereinafter set forth the sum of \$100,406.00. In the said assessment The Crocker National Bank of San Francisco is described as "Receiver of Impounded Moneys," and is further described as "Receiver or depository under order of Court of the Impounded moneys in Equity Suits Numbered 14,275—14,735—14,892—15,131—15,569—15,344—26, District Court of the United States, wherein the Spring Valley Water Company is plaintiff and City and County of San Francisco et al., defendants." There is added to the last mentioned designation the words "(Assessment for the year 1913)." On the said assessment there

are the further words "Escaped assessment for the year 1913."

The said property has been assessed on the said assessment-roll on the said valuation above mentioned, and taxes have been levied thereon for said fiscal year at the rate of \$2,289 on each \$100 of said valuation, the said taxes computed at the said rate amounting to the sum of \$2,298.29.

There has been further assessed to The Crocker National Bank of San Francisco on the said assessment-roll, in the manner hereinafter set forth, the sum of \$192,866.00. In the said [19] assessment The Crocker National Bank of San Francisco is described as "Receiver of Impounded Moneys," and is further described as "Receiver or depository under order of Court of the impounded moneys in Equity Suits Numbered 14,275—14,735—14,892—15,131—15,569—15,344—26, District Court of the United States, wherein the Spring Valley Water Company is plaintiff and City and County of San Francisco et al., defendants." The said property has been assessed on the said assesment-roll on the said valuation above mentioned, and taxes have been levied thereon for said fiscal year at the rate of \$2,289 on each \$100 of said valuation, the said taxes computed at the said rate amounting to the sum of \$4,414.70.

There has been assessed to The Bank of California National Association on the assessment-roll of the city and county of San Francisco, State of California, for the fiscal year 1914—1915, in volume entitled "Vol. 2B Unsecured Personal Property 1914" at

page 16 of said volume, in the manner hereinafter set forth the sum of \$201,997.00. In the said assessment The Bank of California National Association is described as "Receiver of Impounded Moneys," and is further described as "Receiver or depository under order of court of the impounded moneys in Equity Suits numbered 14,275—14,735—14,892—15,131—15,569—15,344—26, District Court of the United States, wherein the Spring Valley Water Company is plaintiff and City and County of San Francisco et al., defendants." There is added to the last-mentioned designation the words "(Assessment for the year 1913)." On the said assessment there are the further words "Escaped assessment for the year 1913."

The said property has been assessed on the said assessment-roll on the said valuation above mentioned, and taxes have been [20] levied thereon for said fiscal year at the rate of \$2.289 on each \$100 of said valuation, the said taxes computed at the said rate amounting to the sum of \$4,623.71.

There has been further assessed to The Bank of California National Association on the said assessment-roll, in the manner hereinafter set forth, the sum of \$291,505.00. In the said assessment The Bank of California National Association is described as "Receiver of Impounded Moneys," and is further described as "Receiver or depository under order of court of the impounded moneys in Equity Suits Numbered 14,275—14,735—14,892—15,131—15,569—15,344—26, District Court of the United States, wherein the Spring Valley Water Company is plaintiff and City and County of San Francisco et al., Defendants."

The said property has been assessed on the said assessment-roll on the said valuation above mentioned, and taxes have been levied thereon for said fiscal year at the rate of \$2.289 on each \$100 of said valuation, the said taxes computed at the said rate amounting to the sum of \$6672.55.

There has been assessed to the Union Trust Company of San Francisco on the assessment-roll of the city and county of San Francisco, State of California, for the fiscal year 1914-1915, in volume entitled "Vol. 15 T. U. V. Unsecured Personal Property 1914" at page 90 of said volume, in the manner hereinafter set forth the sum of \$202,007.00. In the said assessment the Union Trust Company of San Francisco is described as "Receiver of Impounded Moneys," and is further described as "Receiver or depository under order of court of the impounded moneys in Equity Suits numbered 14,275-14,735-14,892-15,131-15,569-15,344-26, District Court of the United States, wherein the Spring Valley Water Company is plaintiff and City and County of San [21] Francisco et al., defendants." There is added to the last mentioned designation the words "(Assessment for the year 1913)." On the said assessment there are the further words, "Escaped assessment for the year 1913."

The said property has been assessed on the said assessment-roll on the said valuation above mentioned, and taxes have been levied thereon for said fiscal year at the rate of \$2.289 on each \$100 of said valuation, the said taxes computed at the said rate amounting to the sum of \$4,623.94.

There has been further assessed to the Union Trust Company of San Francisco on the said assessment-roll, in the manner hereinafter set forth, the sum of \$266,413.00. In the said assessment the Union Trust Company of San Francisco is described as "Receiver of Impounded Moneys," and is further described as "Receiver or depository under order of court of the impounded moneys in Equity Suits Numbered 14,275—14,735—14,892—15,131—15,569—15,344—26, District Court of the United States, wherein the Spring Valley Water Company is plaintiff and City and County of San Francisco et al., defendants." The said property has been assessed on the said assessment-roll on the said valuation above mentioned, and taxes have been levied thereon for said fiscal year at the rate of \$2.289 on each \$100 of said valuation, the said taxes computed at the said rate amounting to the sum of \$6,098.20.

There has been assessed to The First National Bank of San Francisco on the assessment-roll of the city and county of San Francisco, State of California, for the fiscal year 1914-1915, in volume entitled "Vol. 5 E. F. Unsecured Personal Property 1914" at page 114 of said volume, in the manner hereinafter set forth the sum of \$202,008.00. In the said assessment The [22] First National Bank of San Francisco is described as "Receiver of Impounded Moneys," and is further described as "Receiver or depository under order of court of the impounded moneys in Equity Suits Numbered 14,275—14,735—14,892—15,131—15,569—15,344—26, District Court of the United States, wherein the Spring Valley

Water Company is plaintiff and City and County of San Francisco et al., defendants.” There is added to the last mentioned designation the words “(Assessment for the year 1913).” On the said assessment there are the further words, “Escaped assessment for the year 1913.”

The said property has been assessed on the said assessment-roll on the said valuation above mentioned, and taxes have been levied thereon for said fiscal year at the rate of \$2.289 on each \$100 of said valuation, the said taxes computed at the said rate amounting to the sum of \$4,623.96.

There has been further assessed to The First National Bank of San Francisco on the said assessment-roll, in the manner hereinafter set forth, the sum of \$266,409.00. In the said assessment The First National Bank of San Francisco is described as “Receiver of Impounded Moneys,” and is further described as “Receiver or depository under order of court of the impounded moneys in Equity Suits Numbered 14,275—14,735—14,892—15,131—15,569—15,344—26, District Court of the United States, wherein the Spring Valley Water Company is plaintiff and City and County of San Francisco et al., defendants.” The said property has been assessed on the said assessment-roll on the said valuation above mentioned, and taxes have been levied thereon for said fiscal year at the rate of \$2,289 on each \$100 of said valuation, the said taxes computed at the said rate amounting to the sum of \$6,098.11. [23]

There has been assessed to The Anglo and London Paris National Bank on the assessment-roll of the

city and county of San Francisco, State of California, for the fiscal year 1914-1915, in volume entitled "Vol. 1A Unsecured Personal Property 1914" at page 59 of said volume, in the manner hereinafter set forth the sum of \$202,030.00. In the said assessment The Anglo and London Paris National Bank is described as "Receiver of Impounded Moneys," and is further described as "Receiver or depository under order of court of the impounded moneys in Equity Suits Numbered 14,275-14,735-14,892-15,131-15,569-15,344-26, District Court of the United States, wherein the Spring Valley Water Company is plaintiff and City and County of San Francisco et al., defendants." There is added to the last mentioned designation the words "(Assessment for the year 1913)." On the said assessment there are the further words, "Escaped assessment for the year 1913."

The said property has been assessed on the said assessment-roll on the said valuation above mentioned, and taxes have been levied thereon for said fiscal year at the rate of \$2.289 on each \$100 of said valuation, the said taxes computed at the said rate amounting to the sum of \$4,624.47.

There has been further assessed to The Anglo and London Paris National Bank on the said assessment-roll, in the manner hereinafter set forth, the sum of \$266,441.00. In the said assessment The Anglo and London Paris National Bank is described as "Receiver of Impounded Moneys," and is further described as "Receiver or depository under order of court of the impounded moneys in Equity Suits Num-

bered 14,275—14,735—14,892—15,131—15,569—15,344—26, District Court of the United States, wherein the Spring Valley Water Company is plaintiff and City and County of San [24] Francisco et al., defendants.” The said property has been assessed on the said assessment-roll on the said valuation above mentioned, and taxes have been levied thereon for said fiscal year at the rate of \$2,289 on each \$100 of said valuation, the said taxes computed at the said rate amounting to the sum of \$6,098.84.

There has been assessed to Mercantile Trust Company of San Francisco on the assessment-roll of the City and County of San Francisco, State of California, for the fiscal year 1914-1915, in volume entitled “Vol. 10M Unsecured Personal Property 1914,” at page 56 of said volume, in the manner hereinafter set forth the sum of \$370,463. In the said assessment, Mercantile Trust Company of San Francisco is described as “Receiver of Impounded Moneys,” and is further described as “Receiver or depository under order of court of the impounded moneys in Equity Suits Numbered 14,275—14,735—14,829—15,131—15,569—15,344—26, District Court of the United States, wherein the Spring Valley Water Company is plaintiff and City and County of San Francisco et al., defendants.” There is added to the last mentioned, and taxes have been levied thereon for the said fiscal year at the rate of \$2.289 on each \$100 of said valuation, the said taxes computed at the said rate amounting to the sum of \$8,479.89.

There has been further assessed to Mercantile Trust Company of San Francisco on the said assess-

ment-roll, in the manner hereinafter set forth, the sum of \$295,327. In the said assessment Mercantile Trust Company of San Francisco is described as [25] "Receiver of Impounded Moneys," and is further described as "Receiver or depository under order of court of the impounded moneys in Equity Suits Numbered 14,275—14,735—14,892—15,131—15,569—15,344—26, District Court of the United States, wherein the Spring Valley Water Company is plaintiff and City and County of San Francisco et al., defendants." The said property has been assessed on the said assessment-roll on the said valuation above mentioned, and taxes have been levied thereon for said fiscal year at the rate of \$2.289 on each \$100 of said valuation, the said taxes computed at the said rate amounting to the sum of \$6,760.04.

The last two assessments, to wit, those against Mercantile Trust Company of San Francisco, were originally assessed to Mercantile National Bank of San Francisco, owing to an erroneous return made by the latter institution. The said assessments were corrected by the assessor on the assessment-rolls subsequently to the making of the aforesaid application for an order of court, so that said assessment-rolls now show said moneys to be assessed to Mercantile Trust Company of San Francisco.

Suit No. 14,275, referred to in each of the foregoing assessments, is an action similar to those hereinbefore set forth, and was commenced in the United States Circuit Court, Ninth Judicial Circuit, Northern District of California, by Spring Valley Water Company against the City and County of San Fran-

cisco and the Board of Supervisors of said city and county, in June, 1907. No moneys, however, were impounded in said suit, either by stipulation of the parties, order of court, or otherwise, and none of the above-mentioned banks were in possession of any moneys deposited in said suit, either on the first Monday in March, 1913, or on the first Monday in March, 1914. [26]

Suit No. 26, referred to in each of the foregoing assessments, was, as has been hereinbefore set forth, commenced on the 27th day of June, 1913, and, on the first Monday in March, 1913, none of the above-mentioned banks were in possession of any moneys deposited in said suit.

In suit No. 15,569, referred to in each of the foregoing assessments, no moneys were on deposit on the first Monday in March, 1913, with any of the following named banks: The Bank of California National Association, The Anglo and London Paris National Bank, The First National Bank of San Francisco, and Union Trust Company of San Francisco.

In Suit No. 26, referred to in each of the foregoing assessments, no moneys were on deposit on the first Monday in March, 1914, either with The Anglo and London Paris National Bank or Union Trust Company of San Francisco.

In each of the foregoing assessments no separate assessment was made of any moneys alleged to be impounded in any specified suit, but the assessment was made of all impounded moneys on deposit with each of said banks in all of the above named suits.

In none of the suits hereinbefore referred to have

any moneys been deposited with Mercantile National Bank of San Francisco.

In none of the suits hereinbefore referred to has any order appointing a receiver been made, unless the orders appointing the special master and requiring the impounding of the excess moneys in the various banks, as hereinbefore set forth, come within that category, but said banks have at all times held said moneys on deposit subject to the conditions specified in the stipulations by the parties and orders of Court, as hereinbefore set forth.

The money deposited by Spring Valley Water Company with the various banks, as hereinbefore stated, has in no instance [27] been kept as a separate or designated fund by any of said banks, but in each case has been mingled with the general funds of the bank and credited by said bank to the respective suit in connection with which it has been deposited.

Each of the above-named banks, to wit: Wells Fargo Nevada National Bank of San Francisco, The Crocker National Bank of San Francisco, The Bank of California National Association, Union Trust Company of San Francisco, The First National Bank of San Francisco, The Anglo and London Paris National Bank, Mercantile Trust Company of San Francisco, and Mercantile National Bank of San Francisco, has paid the one per cent tax assessed against it for the fiscal years 1913-1914 and 1914-

1915 under the provisions of Article XIII, Section 14, of the Constitution of California.

EDWARD J. McCUTCHEN,

Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD

Of Counsel for Complainant.

PERCY V. LONG,

Solicitor for Defendants.

PERCY V. LONG,

City Attorney, Solicitor for Tax Collector.

[Endorsed]: Filed Dec. 29, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [28]

*In the District Court of the United States, Northern
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—

*~~15,326~~.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Cor-
poration,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO
et al.,

Defendants.

(Order for Payment of Taxes.)

Upon reading the affidavit of Edward F. Bryant,
Tax Collector in and for the City and County of San

*Corrected pursuant to Order signed and filed December 30, 1914, nunc
pro tunc December 1, 1914. J. A. Schaertzer, Deputy Clerk.

Francisco, and upon motion of Percy V. Long, City Attorney of the City and County of San Francisco, IT IS HEREBY ORDERED that the sum of Eight Thousand Four Hundred Seventy-nine and 89/100 (\$8,479.89) Dollars be paid out of sums deposited subject to order of this Court in the above-entitled

*Trust Company

actions in the Mercantile ~~National Bank~~, of San Francisco, to said Tax Collector, being the taxes levied in accordance with Sections 3647 and 3649 of the Political Code upon certain sums received by

*Trust Company

said Mercantile ~~National Bank~~ of San Francisco as receivers and depositaries in accordance with orders heretofore made in the above entitled matters by the above entitled court; which sums escaped assessment for the fiscal year 1913-14;

AND IT IS FURTHER ORDERED that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of Eight Thousand, Four Hundred Seventy-nine & 89/100 (\$8,479.89) Dollars, as [29] taxes out of the sums impounded and deposited in said bank as aforesaid.

Dated: December 1st, 1914.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Dec. 1, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [30]

*In the District Court of the United States, Northern
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—
~~15,326.~~

SPRING VALLEY WATER COMPANY, a Cor-
poration,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO
et al.,

Defendants.

**(Order Nunc Pro Tunc for Order Directing Pay-
ment Taxes on Impounded Money by Mercantile
Trust Company of San Francisco.)**

WHEREAS, on the first day of December, 1914, this Court made its order directing payment by the Mercantile National Bank to E. F. Bryant, Tax Collector of the City and County of San Francisco, of the sum of Eight Thousand Four Hundred Seventy-nine and 89/100 (\$8,479.89) Dollars as taxes for the fiscal year 1914-15, on the impounded rate moneys in the above-entitled actions; and

WHEREAS, it appears that no moneys were deposited with the Mercantile National Bank in the above-entitled actions and that moneys were deposited with the Mercantile Trust Company of San Francisco in the above-entitled actions; and

WHEREAS, it now appears that the assessment of the moneys so taxed had been originally erroneously made against said Mercantile National Bank,

instead of against the Mercantile Trust Company of San Francisco, as receiver and depository, where said moneys were actually on deposit; and

WHEREAS, the said Mercantile Trust Company of San Francisco paid said taxes in compliance with the said order directed to the Mercantile National Bank, and [31]

WHEREAS, prior to receipt of said taxes by the said Tax Collector, said erroneous assessment was regularly corrected on the books by the Assessor of the City and County of San Francisco and said taxes now appear thereon to have been duly paid by the Mercantile Trust Company of San Francisco, receiver as aforesaid, and

It appearing to the Court, ~~upon stipulation of all parties concerned,~~ that said order of December 1, 1914, should be corrected to conform with said payment, in order that the same shall appear to have been made upon authorization of this Court,

NOW THEREFORE, it is hereby ORDERED that the order of this Court made the first day of December, 1914, directing the payment by the Mercantile National Bank to Edward E. Bryant, Tax Collector of the City and County of San Francisco, of the sum of Eight Thousand Four Hundred Seventy-nine and 89/100 (\$8,479.89) Dollars, taxes as aforesaid, be corrected on its face so as to order said payment to be made by the Mercantile Trust Company of San Francisco as receiver and depository of said impounded moneys; and the clerk of the Court is hereby authorized and directed to make such correction *nunc pro tunc*; and it is further ordered

that the action of the Mercantile Trust Company of San Francisco in paying said taxes be and it is hereby ratified, confirmed and approved.

Dated December 30, 1914.

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed Dec. 30, 1914, *nunc pro tunc* Dec. 1, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [32]

*In the District Court of the United States, Northern
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,
Defendants.

Petition for Appeal.

SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled action, feeling itself aggrieved by the decision of the Court in said action and the order entered herein on the 1st day of December, 1914, wherein and whereby it was ordered that the sum of \$8,479.89 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with MERCANTILE TRUST COMPANY OF SAN FRANCISCO, subject to the orders of the

above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$8,479.89, as taxes, out of the sums deposited and impounded in said bank as aforesaid; comes now, by its undersigned solicitors, and appeals from said order to the United States Circuit Court of Appeals, and prays that this, its petition for said appeal, may be allowed [33] and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to said United States Circuit Court of Appeals for the Ninth Circuit; and now, at the time of the filing of said petition for appeal, the said appellant files an assignment of errors setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner further prays that an order be made fixing the amount of the cost bond which this appellant shall give and furnish upon said appeal.

And your petitioner will ever pray.

EDWARD J. McCUTCHEN,
A. CRAWFORD GREENE,
Solicitors for Said Complainant.

McCUTCHEN, OLNEY & WILLARD,
Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [34]

*In the District Court of the United States, Northern
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,
Defendants.

Assignment of Errors.

Now comes SPRING VALLEY WATER COMPANY, a corporation, complainant in the above-entitled actions, by its undersigned solicitors, and says that in the record, proceeding and order made and entered in these cases on the first day of December, 1914, wherein and whereby it was ordered that the sum of \$8,479.89 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Mercantile Trust Company of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Mercantile Trust Company of San Francisco for the payment of said sum of \$8,479.89, as taxes, out of the sums deposited and impounded in said Mercantile Trust Company of San Francisco as aforesaid, there is manifest error, in that the said complaint has been denied its just rights by the order

entered by said district court, and the said complainant hereby assigns and sets out [35] separately and particularly the following errors, viz.:

I.

The Court erred in refusing to deny the application of the City Attorney of the City and County of San Francisco, State of California, as attorney for the Tax Collector of said city and county, for an order of the above-entitled court directing the payment of the taxes levied and assessed against the above-named Mercantile Trust Company of San Francisco as receiver and depository of moneys in litigation in the above-entitled actions.

II.

The Court erred in making its order directing that the sum of \$8,479.89 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of sums deposited in Mercantile Trust Company of San Francisco, subject to the order of said court in the above-entitled actions, and in further ordering that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Mercantile Trust Company of San Francisco for the payment of said sum of \$8,479.89, as taxes, out of the sums deposited and impounded in said Mercantile Trust Company of San Francisco, as aforesaid.

III.

The Court erred in making said order and in holding and deciding that said taxes were assessed and levied in accordance with Sections 3647 and 3649 of the Political Code of California, or in accordance

with either of said sections.

IV.

The Court erred in making said order and in holding and deciding that said moneys, deposited in said Mercantile Trust Company of San Francisco, as aforesaid, were moneys in litigation in the possession of said Mercantile Trust Company of San Francisco as receiver. [36]

V.

The Court erred in making said order and in holding and deciding that said taxes were assessed and levied upon certain sums received by said Mercantile Trust Company of San Francisco as a receiver and depository in accordance with orders heretofore made in the above-entitled actions by the above-entitled court.

VI.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed.

VII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed as moneys in litigation in the possession of said Mercantile Trust Company of San Francisco as receiver.

VIII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed and levied as taxes on moneys which had escaped assessment for the fiscal year 1913-1914.

IX.

The Court erred in making said order, because it appears from the undisputed facts of the case that said assessment was originally made to Mercantile National Bank and that said assessment was changed by the assessor on the assessment-rolls subsequent to the 28th day of November, 1914, without authority of law, so that said assessment would show said moneys to be assessed to Mercantile Trust Company of San Francisco. [37]

X.

The Court erred in making said order, because it appears from the undisputed facts of the case that in none of the above-entitled actions have any moneys been deposited with Mercantile National Bank of San Francisco.

XI.

The Court erred in making said order, because it appears from the undisputed facts of the case that, in action No. 14,275, referred to in the assessment to said Mercantile Trust Company of San Francisco, no moneys were on deposit with said Mercantile Trust Company of San Francisco on the first Monday in March, 1913.

XII.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 26 of the above-entitled actions, referred to in the assessment to said Mercantile Trust Company of San Francisco, no moneys were on deposit with said Mercantile Trust Company of San Francisco on the first Monday in March, 1913.

XIII.

The Court erred in making said order and in directing that the sum of \$8,479.89 be paid out of sums deposited in said Mercantile Trust Company of San Francisco in the above-entitled actions and in not directing or specifying what sum should be paid out of the sum deposited in said Mercantile Trust Company of San Francisco in each of said actions.

XIV.

The Court was without jurisdiction to make said order, or any order directing payment of taxes out of said moneys, because it appears from the undisputed facts of the case that said moneys [38] were deposited by complainant with said Mercantile Trust Company of San Francisco pursuant to stipulations by the parties and orders of court in the above-entitled actions that said moneys should be returned to complainant in the event complainant was successful in said actions, or, in the event that the charges collected by complainant should be held excessive, that said moneys should be refunded to the persons from whom they were collected.

XV.

The Court was without jurisdiction to make said or any order directing the payment of taxes out of the moneys deposited by complainant with said Mercantile Trust Company of San Francisco in action No. 15,344 of the above-entitled actions, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said Mercantile Trust Company of San Francisco pursuant to a stipulation by the parties in the above-

entitled action that said deposit should be subject to the condition that any amount so deposited would be repaid to complainant in case it should be successful in said action, or in case the rates fixed by the ordinance in question should be held valid, then said amounts would be returned to the persons entitled thereto, and were not deposited in said Mercantile Trust Company of San Francisco pursuant to any order of court directing that said moneys should be held subject to the order of the court in the above-entitled action.

XVI.

The Court erred in making said order, because it appears from the undisputed facts of the case that said Mercantile Trust Company of San Francisco had paid the one per cent tax assessed against it for the fiscal year 1913-1914 under the provisions [39] of Article XIII, Section 14, of the Constitution of California.

WHEREFORE, said complainant, Spring Valley Water Company, prays that the order of the above-entitled court be set aside and that an order be entered denying the aforesaid application.

Dated: San Francisco, California, December 30, 1914.

EDWARD J. McCUTCHEN,
McCUTCHEN, OLNEY & WILLARD,
Of Counsel for Complainant.
A. CRAWFORD GREENE,
Solicitors for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [40]

*In the District Court of the United States, Northern
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO
et al.,

Defendants.

**Order Permitting an Appeal and Fixing Amount of
Cost Bond on Appeal.**

WHEREAS, in the District Court of the United States, Ninth Circuit, Northern District of California, on the 1st day of December, 1914, an order was made and entered in the above-entitled cause, wherein and whereby it was ordered that the sum of \$8,479.89 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with MERCANTILE TRUST COMPANY OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$8,479.89, as taxes, out of the sums deposited and impounded in said bank as aforesaid; and,

WHEREAS, Spring Valley Water Company, a corporation, complainant in the above-entitled action,

has, on this [41] 30th day of December, 1914, filed its petition for the allowance of an appeal from said order to the United States Circuit Court of Appeals, Ninth Circuit, together with an assignment of errors, in and by which said petition it has prayed that an order be made fixing the amount of the cost bond which it shall give and furnish on said appeal;

NOW, THEREFORE, in consideration of the premises, and good cause appearing therefor, it is ordered that said appeal be, and the same is hereby, permitted and allowed.

IT IS FURTHER ORDERED, that the said Spring Valley Water Company, a corporation, complainant herein, shall file its undertaking and cost bond in form and substance conditioned and with sureties in accordance with the provisions of the law and the rules and practice of this court in the said United States District Court in the sum of \$300 00/100, which said bond and sureties thereon shall be approved before filing, and said amount is hereby fixed as the amount of said bond. Said bond will be approved by a judge of this court.

WM. C. VAN FLEET,
United States District Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [42]

*In the District Court of the United States, Northern
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO
et al.,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:

That we, SPRING VALLEY WATER COMPANY, a Corporation, as principal, and MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation organized under the laws of the State of Massachusetts, and duly authorized to execute bonds and undertakings in judicial proceedings pending in the courts of the United States, as surety, are held and firmly bound unto the CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and the Tax Collector of said city and county, in the full and just sum of Three Hundred (300) Dollars, lawful money of the United States, to be paid to the said City and County of San Francisco, a municipal corporation, and the Tax Collector of said city and county, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our

heirs, successors, representatives and assigns firmly by these presents. [43]

Sealed with our seals, and dated this 30th day of December, 1914.

WHEREAS, the above-named complainant, Spring Valley Water Company, a corporation, has obtained from the District Court of the United States, Northern District of California, its order allowing said complainant to appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit, to reverse an order made and entered in the above-entitled actions, wherein and whereby it was ordered that the sum of \$8,479.89 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with MERCANTILE TRUST COMPANY OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of \$8,479.89, as taxes, out of the sums deposited and impounded in said bank as aforesaid;

NOW, THEREFORE, the condition of this obligation is such that if the above-named complainant, Spring Valley Water Company, a corporation, shall prosecute such appeal to effect, and answer all costs if it shall fail to make good said plea, then this obligation shall be void; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, said SPRING VALLEY WATER COMPANY, a Corporation, has caused these presents to be executed by its Vice-president and Secretary, thereunto duly authorized, and its corporate seal to be hereunto affixed, and said MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation, has caused [44] these presents to be executed by its Attorneys in Fact, thereunto duly authorized, and its corporate seal to be hereunto affixed, this 30th day of December, 1914.

[Seal] SPRING VALLEY WATER COMPANY.

By S. P. EASTMAN,
Vice-President.

By JOHN E. BEHAN,
Secretary.

[Seal] MASSACHUSETTS BONDING
AND INSURANCE COMPANY.

By JOHN H. ROBERTSON and
FRANK M. HALL,
Attorneys in Fact.

The foregoing bond is hereby approved this 30th day of December, 1914.

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [45]

*In the District Court of the United States, Northern
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Cor-
poration,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO
et al.,

Defendants.

Praecipe [for Transcript of Record].

The clerk of the above-entitled court will please prepare a transcript of the record for the appellate court in the above-entitled cause, and is directed to insert therein the following:

(1) The notice of motion for an order directing the payment of taxes on the impounded moneys.

(2) The agreed statement heretofore filed in the above-entitled cause on December 29, 1914.

(3) The order of court directing that the sum of \$8,479.89 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Mercantile National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions.

(4) The order of court correcting the above-mentioned order so as to refer to Mercantile Trust Company of San Francisco instead of to Mercantile National Bank of San Francisco. [46]

(5) All papers filed by complainant, Spring Val-

ley Water Company, a corporation, in the prosecution of its appeal, including petition for appeal, assignment of errors, order permitting appeal, and citation on appeal, the appeal bond and the approval of the same.

EDWARD J. McCUTCHEN,
A. CRAWFORD GREENE,
Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,
Of Counsel for Complainant.

[Endorsed]: Filed Jan. 2, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [47]

*In the District Court of the United States, in and for
the Northern District of California, Second
Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO
et al.,

Defendants.

**Certificate of Clerk U. S. District Court to Transcript
of Record.**

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing forty-seven (47) pages, numbered from 1 to 47 inclusive,

to be full, true and correct copies of the records and proceedings as enumerated in the praecipe for transcript of record, as the same remain on file and of record in the above-entitled cause, and that the same constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$28.40; that said amount was paid by Messrs. McCutchen, Olney & Willard, attorneys for plaintiff; and that the original citation issued herein is hereunto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 2d day of January, A. D. 1915.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk.

[Ten Cents Internal Revenue Stamp. Canceled
Jan. 2, 1915. J. A. S.]

*In the District Court of the United States, Northern
District of California, Second Division.*

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO
et al.,

Defendants.

Citation [on Appeal (Original)].

United States of America.—ss.

The President of the United States, to City and County of San Francisco, a Municipal Corporation, the Tax Collector of Said City and County, and Percy V. Long, City Attorney, Attorney for Said Tax Collector, and for Said City and County, Greeting:

YOU ARE HEREBY CITED and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the City and County of San Francisco, State of California, on the 29th day of January, 1915, being within thirty days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the District Court of the United States, for the Northern District of California, Second Division, wherein Spring Valley Water Company, a corporation, complainant in said actions, is appellant, and you are appellees, to show cause, if any there be, why the order made and entered in said actions, wherein and whereby it was ordered, as in said order allowing appeal mentioned, that the sum of \$8,479.89 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Mercantile Trust Company of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge, for the Northern District of California, this 31st day of December, 1914.

WM. C. VAN FLEET,
United States District Judge.

Service of the within Citation and receipt of a copy is hereby admitted this 2d day of January, 1915.

PERCY V. LONG.

[Endorsed]: 14,735—14,892—15,131—15,569—15,344 and No. 26. In the District Court of the United States, Second Division, Northern District of California. Spring Valley Water Company, a Corporation, Complainant, vs. City and County of San Francisco, et al., Defendants. Citation. "A" Filed Jan. 2, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 2543. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Filed January 2, 1915.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

At a stated term, to wit: the October Term A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the eleventh day of January, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; Honorable WILLIAM C. VAN FLEET, District Judge.

Nos. 2547 to 2559, inclusive.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and TAX COLLECTOR OF SAID CITY AND COUNTY,
Appellees.

Order That Agreed Stipulation of Facts in Spring Valley Water Co. vs. City and County of S. F. may be Considered Part of Records in the Above-entitled Actions, etc.

On motion of Mr. A. Crawford Greene, counsel for the appellants, and by consent of Mr. Percy V. Long, counsel for the appellees, and pursuant to the stipulation of counsel filed January 5, 1915, it is ORDERED that the Agreed Stipulation as to facts contained in the Transcript of the Record in the cause entitled Spring Valley Water Company, a Corporation, Ap-

pellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, may, for the purposes of appeal, be considered as a part of each of the Transcripts of the Records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

On like motion, it is FURTHER ORDERED that the above-entitled causes be, and hereby are assigned for hearing with the cause entitled Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, on March 18, 1915, and that all of said cases may be submitted on one brief on behalf of each of the respective parties hereto.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

Nos. 2543, 2547, 2548, 2549, 2550, 2551, 2552, 2553.
2554, 2555, 2556, 2557, 2558, 2559.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,
Respondents.

**Stipulation [That Agreed Stipulation of Facts
Contains All Material Facts, etc.].**

WHEREAS, on the first day of December, 1914,

the District Court of the United States, Northern District of California, Second Division, in actions Nos. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid district court in the aforesaid actions; and,

WHEREAS, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to facts; and,

WHEREAS, in action No. 2543 in the above-entitled court, on appeal from one of the aforesaid fourteen orders of said district court, the said Agreed Stipulation as to facts is fully set out and contained in the transcript of the record in said district court; and,

WHEREAS, by stipulation of the parties hereto and an order of the above-entitled court made in pursuance of said stipulation, the said Agreed Stipulation as to facts is incorporated by reference in each of the transcripts of the records in actions Nos. 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558 and 2559 in the above-entitled court;

NOW, THEREFORE, it is hereby stipulated and agreed by and between the parties hereto that the said Agreed Stipulation As to Facts contains all the material facts upon which the said district court made its said orders as aforesaid, and that said Agreed Stipulation as to facts contains all the ma-

terial facts which were set out and contained in the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, State of California, which said affidavit is referred to in each of said orders as aforesaid.

Dated Jan. 12, 1915.

E. J. McCUTCHEN,

A. C. GREENE,

Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,

Of Counsel for Appellant.

PERCY V. LONG,

City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2543, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation. Filed Jan. 12, 1915. F. D. Monckton, Clerk.

